**Exxon Shipping Company *and* Exxon Seamen's Union.** Case 22–CA–15637

April 5, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On June 26, 1989, Administrative Law Judge Steven Davis issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed cross-exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order. For reasons stated in section C below, we decline to adopt his recommended Order dismissing the complaint.

A. *Factual Findings*

The Respondent is engaged, inter alia, in the business of coastwise shipping of petroleum products. The Union and its predecessor have had a collective-bargaining relationship with the Respondent for more than 30 years. All the 500 unlicensed seamen employed aboard the Respondent's approximately 19 ships are represented by the Union. The last collective-bargaining agreement ran from July 31, 1985, to August 31, 1987, but was extended to January 25, 1988. That agreement provided for a $15 bimonthly dues checkoff. On January 25, the employees voted to reject the Respondent's contract proposal and, shortly thereafter, the Respondent terminated the contract and ceased making deductions for the union dues.

For at least 30 years the Respondent has used a ''draw check order'' system by which employees could direct that a portion of their wages be sent to a bank or a specified name and address. The draw check order forms provide a blank space for specifying the amount or percentage of wages that are to be directed to the named payee, and they also provide that the payment authorization ''is to remain in effect until changed or revoked by me [the employee signing the form] in writing or until termination of employment.'' The form also contains boxes which may be checked to cancel or modify a previous authorization. There does not appear to be any statutory restriction on a coastwise voyaging sailor's designation of any payee as recipient of his pay; the order forms do not contain any restrictions on their face; and the Respondent has no written guidelines or restrictions on the use of draw checks, except as to the United Way.[1] Although the Respondent's officials have told employees at orientation sessions that the draw check orders were for the purpose of having their pay sent to their families, the Respondent had permitted draw check orders for such purposes as paying taxes, making investments through brokerage accounts and mutual funds, and paying child support or alimony to former spouses.

In February 1988, several seamen each completed a ''name and address'' draw check order for $15 per pay period, payable to the Union for their dues. In a letter dated March 30 the Respondent declined to honor the draw check orders on the basis that the Union ''cannot be the recipient of . . . allotments.'' The letter included a quotation from The Law of Seamen which stated that:

> The persons who may receive a seaman's allotment of wages are his grandparents, parents, wife, sister or his children. In addition to these persons, he can make an allotment for deposits to his account at a savings bank, United States postal savings bank, or at any bank, trust company or other similar financial institution wherein a savings department is maintained.

The letter went on to state that honoring the draw checks for union dues would violate the laws governing seamen.

On September 20, the Respondent sent the Union a rider to Shipping Articles[2] for coastwise trade, which stated that ''the only allotments permissible shall be those authorized by 46 U.S.C. Sections 10315 and 10316.'' These sections are contained in the chapter of the Federal shipping laws pertaining to ''Foreign and Intercoastal Voyages,'' 46 U.S.C. § 10301 et seq.[3] The relevant provision pertaining to allotments is § 10315, which limits a seaman's allotments to:

(1) . . . the seaman's grandparents, parents, spouse, sister, brother, or children;

(2) . . . an agency designated by the Secretary of the Treasury to handle applications for United States savings bonds, to purchase bonds for the seamen; and

(3) for deposits to be made in an account for savings or investment opened by the seaman and maintained in the seaman's name at a savings bank or a savings institution in which the accounts are insured by the [FDIC] or the [FSLIC].

The Respondent did not give the Union notice and an opportunity to bargain before making this change.

[1] The record is clear that the Respondent would not allow draw check orders for United Way contributions.

[2] Shipping Articles are agreements between the Master or Captain of the ship and the seaman, which set forth the basic obligations of the parties, including the seaman's wages.

[3] 46 U.S.C. § 10506 specifies purposes for which deductions from wages earned on coastwise voyages may be paid into trust funds.

### B. *The Judge's Decision and the Parties' Exceptions*

The complaint alleged that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing, for discriminatory reasons, to process individual employees' draw check orders for payment of union dues, and that it violated Section 8(a)(5) and (1) of the Act by unilaterally changing its general policy pertaining to the availability of draw check orders to employees on coastwise voyages. The judge noted that the evidence shows that, with two exceptions, until employees sought to pay union dues through draw check orders, the Respondent had not invoked 46 U.S.C. §§ 10315–10316 to preclude the processing of draw check orders for payees other than savings banks and family members. The only exceptions were the general policy on United Way contributions and—several occasions—a refusal to process an employee's draw check order for utility bills.[4] The judge accordingly concluded that the General Counsel had made out a prima facie case of discrimination under Section 8(a)(3). He also found that there was no dispute that the Respondent's placement of riders on shipping articles so as to apply the constraints of 46 U.S.C. §§ 10315–10316 to coastwise voyages was done without any effort to seek bargaining with the Union.

The judge nonetheless recommended dismissing all the complaint allegations. He concluded that the Respondent's defense to the General Counsel's prima facie case of discrimination (a defense predicated principally on the Respondent's claim that Federal maritime law prohibited it from allowing the use of draw check orders for paying union dues) and the General Counsel's argument that the Respondent was misapplying maritime law put him in the position of having to decide whether the ''maritime statute'' had been violated and to give a remedy under that statute. The judge decided that he lacked authority to find that the Respondent was misapplying maritime law in imposing its restrictions, so he concluded that the Respondent had carried its burden of rebutting the General Counsel's prima facie case of discrimination in violation of Section 8(a)(3) and (1).

Notwithstanding this refusal to rule directly on the defense, the judge expressed views leaning towards the positions of both parties. On the one hand, he expressed ''doubts'' about the Respondent's interpretation of maritime law. In particular, he rejected the Respondent's contention that 46 U.S.C. § 10507 warranted the application of 46 U.S.C. § 10315 to coastwise voyages because it allowed the owner of a vessel embarking on such a voyage the option of having its crew engaged under the auspices of a shipping commissioner, with certain provisions of the chapter on Foreign and Intercoastal Voyages to apply to their engagement. The judge pointed out that shipping commissioners had not been operative since 1979 and that the specific provisions cited in that section did not include 46 U.S.C. § 10315. On the other hand, he observed that because Congress, in 1951, had rejected a proposal to include labor unions as permissible allottees in the allotment provision that was a predecessor to both 46 U.S.C. § 10315 and 46 U.S.C. § 10506,[5] Congress may have thereby signaled its unwillingness to allow seamen to direct portions of their wages to unions.

Because of the judge's conclusion concerning his limited authority with respect to applying his understanding of maritime law in this case, he also determined that he must dismiss the allegation that the Respondent violated Section 8(a)(5) and (1) when it unilaterally amended shipping articles for coastwise voyages to impose the restrictions of 46 U.S.C. §§ 10315–10316 on the employees.

The General Counsel has excepted, arguing principally (1) that the judge erred in suggesting that draw check orders, such as those at issue here, are the same as ''allotments'' governed by the provisions relied on by the Respondent, and (2) that the evidence establishes violations of the National Labor Relations Act and that making findings to this effect would not require the Board to ''enforce'' or grant a remedy under the Federal maritime laws. The General Counsel further contends that, not only are the restrictions in 46 U.S.C. §§ 10315–10316 clearly applicable *solely* to foreign and intercoastal voyages, but that a provision of the chapter of the shipping code pertaining to coastwise voyages makes it clear that the Respondent was not free to extend those restrictions to coastwise voyages by dint of modifying its shipping articles for such voyages. In particular, the General Counsel refers to 46 U.S.C. § 10502, contained in the chapter titled ''Coastwise Voyages,'' 46 U.S.C. § 10501 et seq. Section 10502 provides, inter alia, that prior to a coastwise voyage, the master of a vessel ''shall make a shipping articles agreement in writing with each seaman on board, declaring the nature of the voyage or the period

[4] The record indicates that the *number* of different payees to whom an employee could have draw checks made out in any given pay period was a source of controversy between the Union and the Respondent. The Respondent, in 1984, had unsuccessfully proffered a proposal in negotiations to limit pay disbursements to ''one location each pay period'' on the grounds that numerous disbursements were an administrative inconvenience. The Respondent withdrew the proposal after union inquiries concerning evidence of the cost of making such disbursements.

[5] 46 U.S.C. § 10506, a provision with the heading ''Trusts,'' is contained in the chapter of the shipping code titled ''Coastwise Voyages,'' 46 U.S.C. § 10501 et seq. It specifies that 46 U.S.C. § 10505, a provision that prohibits certain ''advances'' from a seaman's wages, shall not ''prevent an employer from making deductions'' with written consent into trust funds established for certain specified purposes. Labor unions are not mentioned either in the list of those to whom ''advances'' are prohibited nor in the list of permissible trust fund beneficiaries. The Respondent did not invoke either of these provisions in declining to honor the employees' draw check orders made out to the Union or in its amendment of coastwise shipping articles.

of time for which the seaman is engaged.'' Section 10502(c) provides that such an agreement is not to contain provisions pertaining to ''allotment of wages.''

The Respondent has cross-excepted, arguing that the judge erred in finding a prima facie case that the Respondent discriminated in violation of Section 8(a)(3) and (1), and that the judge should have also based his dismissal of the 8(a)(5) and (1) allegations on a finding that its modification of coastwise shipping articles was not a material change but was merely a clarification of its existing policy concerning draw check orders for coastwise voyages. In defining that policy, the Respondent asserts that the judge correctly concluded that its draw check order procedures are basically an allotment system within the meaning of 46 U.S.C. § 10315; and it argues that, with de minimis exceptions, it has consistently applied the restrictions of 46 U.S.C. § 10315 to all seamen, including those employed on coastwise voyages. It reiterates its contention, based on 46 U.S.C. § 10507, that Federal maritime law warranted its application of the allotment restrictions in 46 U.S.C. § 10315 to draw check orders submitted by seamen on coastwise voyages.

### C. *Analysis*

We agree with the judge that the General Counsel made out a prima facie case that the Respondent discriminated on the basis of union considerations when it refused to process draw check orders made out to the Union. We also agree that the Respondent's modification of coastwise shipping articles at issue here was made without first offering the Union notice and an opportunity to bargain. We disagree with the judge's conclusion that unfair labor practice findings can be made only if we find that the Respondent violated Federal maritime laws and that the only available remedy is under those laws. For the following reasons, we find that the Respondent's actions violated Section 8(a)(5), (3), and (1) as alleged.

1. In agreeing that the General Counsel made out a prima facie case that the Respondent violated Section 8(a)(3) and (1) when it refused to process individual employees' draw check orders for payment of union dues, and in finding that the Respondent did not carry its burden of showing that—even apart from union considerations—it would have refused to accept any draw check order that did not meet the requirements of 46 U.S.C. § 10315, we reject the Respondent's argument that its deviations from that asserted draw check order policy had been de minimis. The Respondent did not show that it had ever sought to establish whether individuals named as payees of draw check orders came within the category of family members specified in 46 U.S.C. § 10315. Thus, there is no reason to believe that one employee's loan payment to an unrelated individual or other instances of alimony payments to ex-wives were mere aberrations. The evidence of draw check orders to state taxing authorities and of an apparently widespread practice of allowing draw check orders to checking accounts and brokerage firms also undermines the Respondent's claim that it had a consistent policy of hewing to the requirements of 46 U.S.C. § 10315. Finally, we note that it was not until after the controversy over the union dues payments had arisen that the Respondent attached riders to its coastwise shipping articles declaring its asserted policy. In light of all this evidence, the restrictions regarding United Way contributions and the testimony that draw check orders for utility bills may have been refused on several occasions are insufficient to compel a finding that the Respondent would—without regard to the union connection—have refused to process any draw check order not meeting the requirements of 46 U.S.C. § 10315.

A violation of Section 8(a)(3) and (1) is therefore established, and we should give the appropriate remedy unless some '''equally important Congressional objectiv[e],''' embodied in another Federal law counsels against this. *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 903 (1984), quoting *Southern S.S. Co. v. NLRB*, 361 U.S. 31, 47 (1942). We perceive no such conflict here.

The Respondent has presented no convincing judicial authority that 46 U.S.C. § 10315 can reasonably be read as applying to coastwise voyages. It is plainly limited to foreign and intercoastal voyages, and coastwise voyages are provided for in an entirely different chapter of Title 46 that does not at any place expressly require the application of requirements like those in 46 U.S.C. § 10315. We agree with the General Counsel that Congress' decision in 1951 not to include union dues in the predecessor statute does not overcome the plain language of the statute as it now exists. In any event, even assuming that 46 U.S.C. § 10315 could properly be read as applying to coastwise voyages, there is no basis for concluding that the draw check orders at issue here would be clearly prohibited. Instead, there is judicial authority to the contrary. In *Skandalis v. M/V Galini*, 1974 A.M.C. 1671 (E.D. Va. 1974), the district court was squarely presented with the question whether deductions for union dues from the wages of a seaman on a foreign voyage violated a Liberian statute derived from 46 U.S.C. § 10315. In deciding the issue, the court construed § 10315 as restricting allotments only in the sense of ''irrevocable assignments of future wages.'' Id. at 1682. The court reasoned as follows (ibid.):

> The prohibition on allotments is a legislative act designed to protect the seaman's wages from his folly, as is 46 U.S.C. sec. 601 exempting a seaman's wages from attachment or garnishment. Credit, in the legislative view, is too liable of mis-

> use by the seaman to be encouraged. But such protections are only required if an allotment is in the nature of an irrevocable assignment of future wages. No such protection is needed where the allotment consists of nothing more than a seaman's decision, at the time his wages are paid, to give some or all of his wages to another. The law may protect seamen, as it does minors, by making certain future contracts with him unenforceable, but it cannot prohibit him from spending his wages as he sees fit.

Applying this logic to deductions for union dues, the court held that such deductions ''would contravene the statute'' only if the agreement for the deductions amounted to ''an irrevocable assignment of future wages'' rather than ''merely a convenience for the seaman that could be terminated by him at any time.'' Id. at 1683.

In the present case, as explained in section A, above, the draw check orders used by the Respondent's employees are in no sense ''irrevocable assignments.'' By their own terms they remain in effect only until ''revoked'' by the employee, and the forms contain no language making them irrevocable for any given period. Further, the Respondent has presented no evidence that the draw check orders made out to the Union, which are at issue here, were special forms containing language of irrevocability. We therefore find that the Respondent violated Section 8(a)(3) and (1) in declining to process them, and will give the appropriate remedy for such a violation.

2. We also find, for the reasons just explained, that the Federal maritime laws present no impediment to finding that the Respondent violated Section 8(a)(5) and (1) when—without offering the Union an opportunity to bargain—it attached riders to coastwise shipping articles applying the restrictions of 46 U.S.C. §§ 10315–10316 to draw check orders made out by employees on such voyages. We accordingly make that finding and grant the appropriate order.[6]

## CONCLUSIONS OF LAW

1. Respondent, Exxon Shipping Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Exxon Seamen's Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to process employees' ''draw check order'' forms in which the unit employees directed Respondent to draw checks payable to the Exxon Seamen's Union, Respondent engaged in an unfair labor practice within the meaning of Section 8(a)(3) and (1) of the Act.

4. By requiring in a Shipping Article that the only allotments permissible shall be those authorized by 46 U.S.C. §§ 10315 and 10316, Respondent engaged in an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act.

5. The unfair labor practices of the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we will require it to cease and desist, to honor draw check order forms payable to the Union for the purpose of union dues, and to rescind the riders to Shipping Articles for coastwise voyages to the extent they limit the use of draw check orders and allotments of wages to those authorized by 46 U.S.C. §§ 10315 and 10316.

If the Respondent shows that it is precluded by order of a court of competent jurisdiction from honoring the draw checks for union dues, we will entertain a motion for reconsideration of this remedy.

## ORDER

The National Labor Relations Board orders that the Respondent, Exxon Shipping Company, Linden, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discriminating against employees by failing and refusing to honor their draw check order forms for the payment of union dues.

(b) Unilaterally, without giving prior notice to or affording the Union an opportunity to bargain, applying the allotment provisions of 46 U.S.C. §§ 10315 and 10316 to Shipping Articles covering coastwise voyages.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor employee draw check order forms payable to the Union for the purpose of union dues.

(b) Rescind the August 22, 1988 riders to Shipping Articles for coastwise voyages to the extent they limit the use of draw check orders and allotments of wages to those as authorized by 46 U.S.C. §§ 10315 and 10316.

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[6] Of course, nothing in this Decision and Order would prohibit the Respondent from bargaining in good faith with the Union for a policy that would restrict the categories of payees for which draw check orders would be processed, even if the Union happened to come within the classification of excluded groups.

Further, in keeping with our obligation to accommodate other statutory schemes to the extent possible, we would entertain a motion for reconsideration were the Respondent able to show that a court of competent jurisdiction subsequently declared the Respondent to be in violation of the maritime laws for permitting revocable authorizations for payment of union dues through draw check orders.

(c) Post at its Linden, New Jersey facilities copies of the attached notice marked ''Appendix.''[7] Copies of the notice, on forms provided by the Regional Director of Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discriminate against employees by failing and refusing to honor their draw check order forms for the payment of union dues.

WE WILL NOT unilaterally, without giving prior notice to or affording the Union an opportunity to bargain, apply the allotment provisions of 46 U.S.C. §§ 10315 and 10316 to draw check orders under coastwise voyages.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL honor employee draw check order forms payable to the Union for the purpose of union dues.

WE WILL rescind the August 22, 1988 riders to Shipping Articles for coastwise voyages to the extent that they limit the use of draw check orders and the allotments of wages to those authorized by 46 U.S.C. §§ 10315 and 10316.

EXXON SHIPPING COMPANY

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

*Gary Carlson, Esq.*, for the General Counsel.
*David Mahoney, Esq.*, of Linden, New Jersey, and *Thomas Mills, Esq. (Dyer, Ellis, Joseph & Mills. Esqs.)*, of Washington, D.C., for the Respondent.
*Howard Goldberger, Esq. (Goldberger & Finn, Esqs.)*, of West Orange, New Jersey, for the Union.

## DECISION

### STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Pursuant to a charge and an amended charge filed on March 29 and November 18, 1988,[1] respectively, by Exxon Seamen's Union (Union), a complaint was issued against the Exxon Shipping Company (Respondent) on May 13.

The complaint alleges essentially that in or about February 1988, Respondent failed and refused to process employees' ''draw check order'' forms in which the employees directed Respondent to draw checks payable to the Union. The complaint also alleges that on or about August 22, Respondent unilaterally changed its employees' terms and conditions of employment by requiring that employees' pay may only be allotted pursuant to certain provisions of Federal law.

Respondent's answer and amended answer denied the material allegations of the complaint and asserted an affirmative defense which stated that Respondent refused to process the employee draw check order forms because it believed that it was required to refuse to process them in order to comply with Federal law.[2]

On December 1, a hearing was held before me in Newark, New Jersey. On the entire case, including my observation of the demeanor of the witnesses and after consideration of the briefs and appendices filed by General Counsel and Respondent, I make the following[3]

### FINDINGS OF FACT

#### I. JURISDICTION

Respondent, a corporation having an office and place of business in Linden, New Jersey, is engaged in the business of coastwise shipping of petroleum and petroleum-related products. Annually, in the course of its business operations, Respondent derived gross revenues in excess of $50,000 for the transportation of such products in interstate commerce pursuant to arrangements with and as agent for Exxon Corporation. Respondent admits and find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent also admits, and I also find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. *The Facts*

##### 1. Background

The Union and its predecessor have represented the unlicensed seamen employed by Respondent for more than 30 years. The Union represents all of the 500 unlicensed seamen employed aboard Respondent's approximately 19 ships. They are assigned to sea voyages which last about 60 days. How-

[1] All dates hereafter are in 1988 unless otherwise stated.

[2] On July 5, Respondent filed a Motion for Summary Judgment in which it contended that there were no genuine issues of material fact; the allotment requested by the union members was illegal; and that Respondent was entitled to judgment as a matter of law. On September 19, the Board denied Respondent's motion.

[3] General Counsel submitted a motion to correct transcript. Inasmuch as no opposition has been filed thereto, it is granted. The transcript's corrections are included in the appendix.

ever, employees who do not use their leaves of absence entitlement may spend 220 days on the vessel.

Respondent and the Union have had continuous collective-bargaining agreements covering the unlicensed seamen. Their last agreement ran from July 31, 1985, to August 31, 1987, but was extended to January 25, 1988. Approximately 475 seamen pay their union dues of $15 bimonthly, by checkoff, pursuant to which Respondent submits their dues, monthly, to the Union.

For at least 30 years, Respondent has utilized a system, called draw check orders, by which an employee may direct that a portion of his wages be sent to a bank or to a specified name and address. The apparent purpose of the draw check system is to enable employees, who are at sea for extended periods of time and therefore unable to take care of their finances regularly by mail or personal visits, to handle financial obligations in a regular manner. The two types of draw check orders, in relevant part are as follows:

*Bank Draw Check Order*

> Please arrange to draw a check made payable and to be sent to the bank shown below in an amount equivalent to $—— or ——% of the wages and allowances after deductions that are due me at the end of each pay period. This authorization is to remain in effect until changed or revoked by me in writing or until termination of employment.
>
> Bank: _____
> Account Name & No: _____
> Bank Address: _____

*Name and Address Draw Check Order*

> Please arrange to draw a check made payable and to be sent to [sic] name and address shown below in an amount equivalent to $—— or ——% of the wages and allowances after deductions that are due me at the end of each pay period. This authorization is to remain in effect until changed or revoked by me in writing or until termination of employment.
>
> Name: _____
> Address: _____

Thomas Shearer, Respondent's personnel specialist, and John Bree, its fleet manning coordinator, testified that in orientation sessions for new employees, they told the new seamen that the ''name and address'' form could be used to send wages home to their families.

The draw check order forms are easily obtainable from the captain of the ship. The employee completes it and returns it to the captain who then forwards it to Respondent's fleet manning coordinator. Bree stated that he reviewed the draw check order forms to see that they were completed accurately; that the names thereon were legible; the percentage amounts do not exceed 100 percent; and if the bank form was being used, that the account number was set forth on the form. Bree further stated that if he saw anything unusual on the forms he sent them to Respondent's maritime counsel, Robert Nicholas.

Bree testified that he was not aware that employees had draw checks payable to checking accounts or that draw checks were payable to brokerage firms. Respondent has no written guidelines or restrictions on the use of draw checks, except as to United Way, which will be discussed. However, he believed that employees were restricted in using the ''name and address'' form to send wages to an individual in their family who would handle their finances. His testimony in this regard is not credible. He stated that it was his responsibility to review the forms, and numerous draw check orders payable to various institutions were approved and processed by Respondent.

For example, certain draw check order forms received in evidence are payable to (a) Internal Revenue Service; (b) California Franchise Tax Board; (c) New York State Department of Taxation and Finance, Tax Compliance Section; (d) Drexel Burnham Lambert, Inc.; (e) Scudder Funds, Scudder Cash Investment Trust; (f) Fidelity Investments; (g) Prudential Bache; (h) Bank of New York—Dreyfus Mutual Funds; (i) Merril Lynch Pierce Fenner & Smith; (j) IDS Mutual Fund Group; (k) Charles Schwab & Co.; (k) Seligman Cash Management—Prime; (l) Kemper Money Market Fund; (m) Shearson Lehman Brothers; (n) Smith Barney; (o) Kidder Peabody, Inc.; (p) New Jersey Mortgage; (q) Clerk of the Court, Panama City, Florida; and (r) Circuit Clerk, Bibb County Courthouse, Centerville, Alabama. In addition, numerous draw check order forms are made out to various bank checking accounts and to former wives for child support, and apparently, alimony.

2. Current events

Bargaining for a renewal collective-bargaining agreement began in the summer of 1987. Respondent made its final proposal in early November, which was submitted to the union membership without the approval of the Union's bargaining committee. On January 25, the employees voted to reject Respondent's proposal. Thereafter, Respondent terminated the prior contract which had been extended to that day, and ceased making deductions for union dues.

Subsequently, several seamen completed draw check orders payable to the Union for the payment of union dues. In February 1988, John Hillman, a member of the Union's board of governors, completed a ''name and address'' draw check order in the amount of $15 per pay period, payable to the Union. Hillman testified that he did go because it was a simple method of paying his dues. He noted that it was difficult for seamen who were at sea for at least 60 days to mail monthly dues checks to the Union.

Prior to February 1988, no employee paid his dues with a draw check order. Dues were checked off by Respondent from the employee's wages and forwarded to the Union.

Those draw check orders payable to the Union were sent to Ronald Floyd, Respondent's staff labor relations specialist. He determined that, with few exceptions, draw check orders had, in the past, been made payable to financial institutions or individuals. He also received the opinion of Attorney Nicholas that such payments are not permitted by maritime law.

On March 30, Floyd sent a letter to Hillman which stated that the Union ''cannot be the recipient of . . . allotments.'' The letter included, in relevant part, the following quotation from the *Law of Seamen*:

> The persons who may receive a seaman's allotment of wages are his grandparents, parents, wife, sister or his

> children. In addition to these persons, he can make an allotment for deposits to his account at a savings bank, United States postal savings bank, or at any bank, trust company or other similar financial institution wherein a savings department is maintained.

The letter further stated:

> The Company's current practice of using draw check orders has been in existence for many years. The intent is to provide a convenient method for seagoing employees to allocate portions of their net pay to relatives and/or financial institutions in accordance with the above stated provisions of law. We have not used draw check orders as a substitute for the Union dues deduction form described in Article II, Section 2 of our Agreement. In fact, to do so would be violative of the laws governing seamen.
>
> In summary, the Company will not honor the requests of those unlicensed employees who have sent in draw check orders designating the Union as the recipient of allotments from their pay checks.

On September 20, Respondent sent the Union certain riders to shipping articles for coastwise trade. Shipping articles, or articles of agreement, is a written agreement between the master or captain of the ship and the seaman, setting forth the basic obligations of both parties, including seamen's wages. The shipping articles state that the collective-bargaining agreement between Respondent and the Union will be applicable to the unlicensed personnel. Coastwise trade applies essentially to voyages between ports in the United States.[4]

One of the riders stated that ''the only allotments permissible shall be those authorized by 46 United States Code Sections 10315 and 10316.'' In a letter accompanying that rider, Respondent stated, in relevant part, that:

> A review of current practice with respect to the attachment of Riders to the Shipping Articles for coastwise trade has established variation in their use. It is therefore desirable that all vessels adopt a consistent approach given that the Riders provide details on pay, regulations and posted offenses. When opening new coastwise articles in the future, please attach Riders one through three. Rider number two has been amended with comments on allotment. Under current law, coastwise terms of allotment have to be specified; otherwise, none is permissible.

Rider 2 states, in relevant part, that ''the only allotments permissible shall be those authorized by 46 U.S.C. Sections 10315 and 10316.''

Those sections, which relate to foreign and intercoastal voyages, state, in relevant part:[5]

*Section 10315. Allotments*

> (a) Under prescribed regulations, a seaman may stipulate as follows . . . for an allotment of any part of the wages the seaman may earn:
>
> (l) to the seaman's grandparents, parents, spouse, sister, brother, or children;
>
> (2) to an agency designated by the Secretary of the Treasury to handle applications for United States savings bonds, to purchase bonds for the seaman; and
>
> (3) for deposits to be made in an account for savings or investment opened by the seaman and maintained in the seaman's name at a savings bank or a savings institution in which the accounts are insured by the [FDIC] or the [FSLIC].
>
> (b) An allotment is valid only if made in writing and signed by and approved by a shipping commissioner. The shipping commissioner shall examine allotments and the parties to them to enforce compliance with the law. Stipulations for allotments made at the beginning of a voyage shall be included in the agreement and shall state the amounts and times of payment and the person to whom payments are to be made.
>
> (c) Only an allotment complying with this section is lawful.

*Section 10316. Trusts*

> Sections 10314 and 10315 . . . do not prevent an employer from making deductions from the wages of a seaman, with the written consent of the seaman, if—
>
> (l) the deductions are paid into a trust fund established only for the benefit of seamen employed by that employer, and the families and dependents of those seamen . . .; and
>
> (2) the payments are held in trust to provide . . . any of the following benefits for those seamen and their families and dependents:
>
> (A) medical or hospital care, or both.
>
> (B) pensions on retirement or death of the seamen.
>
> (C) life insurance .
>
> (D) unemployment benefits.
>
> (E) compensation for illness or injuries resulting from occupational activity.
>
> (F) sickness, accident, and disability compensation.
>
> (G) purchasing insurance to provide any of the benefits specified in this section.

John Hillman, an official of the Union, testified that prior to the institution of this policy, Respondent had never placed restrictions on which persons or institutions the seamen named as payees of their draw checks.[6]

Hillman further stated that allotments were used when he made foreign voyages, and applied only to such foreign travel. Prior to embarking on a foreign voyage before 1979 he

[4] However, the shipping articles state that it applies to voyages to ports in the West Indies Islands, Gulf of Mexico ports, and ports in Canada.

[5] The U.S. Code defines foreign voyages as those between a port in the United States and a port in a foreign country (except a port in Canada, Mexico, or the West Indies. Intercoastal voyages are defined as voyages between a port of the United States on the Atlantic Ocean and a port of the United States on the Pacific Ocean.

[6] In August 1985 and October 1986, Respondent sent letters to its seamen urging them to contribute to United Way. Those letters stated that:

> Maritime law prohibits deductions for charitable contributions from a sailor's paycheck. Please include a check in the amount of your total donation when you return the pledge card.

signed a seaman's allotment note which set forth the amount of the allotment the seaman wished to make and the relationship of the payee to the seaman. That form was signed before a shipping commissioner. In 1979, shipping commissioners were no longer used. Instead the ship's master was empowered to supervise the signing of allotment notes. However, it does not appear that such allotment notes were used even after 1979. Respondent stipulated that since 1979 it has not received any seamen's allotment notes executed by its employees, but stated that it has treated the draw check order forms as allotments.

Hillman also testified that during his foreign voyages, the draw check order he had previously executed was held in abeyance, and the allotment note was honored. When the foreign voyage ended, the draw check order was again honored.

George Young, a seaman serving on the *Exxon Valdez*, testified similarly that he signed allotment notes, prior to 1979, on foreign voyages.

General Counsel argues that the allotment provisions of U.S.C. § 10315 permitting allotment of wages only to immediate relatives and savings banks, relate only to foreign or intercoastal voyages, and not to coastwise voyages, defined as voyages between a port in one State and a port in another State. He asserts that the pay provisions for coastwise voyages is contained in U.S.C. § 10502, which states, in part, that the shipping articles agreement signed by the master and seaman ''may not contain a provision on the allotment of wages.'' Section 10505 prohibits the payment of ''advance'' wages—that is wages in advance of the time they have been earned—to the seaman or anyone else.

Sections 10301 and 10502, et seq., are both concerned with the protection of seamen. Section 10301 requires that *prior* to the beginning of a foreign voyage, the seamen must sign shipping articles before a shipping commissioner and agree, if he wishes, to the payment of an ''allotment'' of his wages to others, as specified in that section. The purpose of such formality was to ensure that the seaman voluntarily agreed to the foreign voyage and that the persons set forth in the allotment were sufficiently closely related to him that his wages would not be stolen by other persons. Sections 10502 and 10506, on the other hand, prohibit the payment of an allotment or advance wages prior to the commencement of the seaman's employment.

In January 1986, the U.S. Coast Guard issued a navigation and vessel inspection circular for the purpose of establishing procedures for the shipment and discharge of seamen aboard U.S. flag vessels. The circular reaffirms the U.S. Code requirement that for foreign and intercoastal voyages, pursuant to Section 10315, allotments only to the classes of persons and savings bank, set forth therein, are valid. The circular's instructions for coastwise voyages merely requires that:

> Before proceeding on a voyage, the master shall make a shipping articles agreement in writing with each seaman on board, declaring the nature of the voyage or the period of time for which the seaman is engaged. The agreement must include the date and time on which the seaman must be on board to begin the voyage.

3. Allotments and draw checks

Positions of the parties

The complaint alleges that Respondent refused to process employees' draw check order forms in which the employees directed Respondent to draw checks payable to the Union in payment of union dues, in violation of Section 8(a)(3) of the Act, and unilaterally changed the terms and conditions of employment of its employees by placing restrictions on the use of such draw checks by limiting their use to the persons or entities set forth in U.S.C. §§ 10315 and 10316, in violation of Section 8(a)(5).

General Counsel's theory is that by refusing to process employees' draw check orders for the payment of union dues, Respondent unlawfully restricted its employees' access to the draw check order system because of their union membership or activity. Such a limitation on the use of a system used by employees for many years, according to General Counsel, violates Section 8(a)(3) of the Act.

In addition, General Counsel argues that by requiring that shipping articles contain a provision that the only allotments permissible are those authorized by Sections 10315 and 10316, Respondent unilaterally changed a term of employment by restricting the use of draw checks in this manner, thereby violating Section 8(a)(5) of the Act.

Respondent argues that the draw check system it has utilized for many years was, in effect, an allotment of wages pursuant to the U.S. Code sections set forth above. Respondent further argues that such allotments must conform to the above provisions of that law. Accordingly, it asserts that inasmuch as Sections 10315 and 10316 permit allotments only to certain classes of allotment such as blood relatives, spouses and savings banks, allotments to the Union for the payment of union dues is impermissible and violates Federal law.

General Counsel agrees that the allotments set forth in the statute apply to foreign and intercostal voyages, but contends that no such restrictions apply to coastwise voyages. Respondent argues that the provisions of Section 10315 apply to coastwise voyages through 46 U.S.C. § 10507. Section 10507 provides as follows:

> (a) At the option of the owner or master of a vessel to which this chapter 46 USC Secs. 10501 et seq. applies, a shipping commissioner may engage and discharge the crew.
>
> (b) When a crew is engaged under this section, sections 10302, 10303, 10305, 10307, 10311, 10312, 10313(b)–(f), and 10321 and chapter 107 of this title apply.

General Counsel further argues that even assuming that allotments apply to seamen engaged in foreign or intercoastal voyages, Respondent has not, since 1979, been concerned with such allotments since it allows draw checks to be paid to classes of persons and institutions not permitted as allotment under the statute. With respect to the application of Respondent's draw check system in the past, General Counsel argues that many of the persons listed as allotment on the draw check order forms are not blood relatives or spouses. In fact, employee Young testified that he paid off a substan-

tial loan to a woman friend in this manner. Respondent answers that it is the responsibility of the seaman to comply with the law by naming a permissible allottee. It states that it has no way of knowing whether an allottee bearing a different name than that of the seaman is a relative. General Counsel further argues that allotments to checking accounts, brokerage institutions, the IRS, and various courts constitute examples where Respondent has permitted the use of draw check orders in the past which do not conform to the U.S. Code sections set forth above. Respondent replies that it has permitted allotments to checking accounts because such accounts are located in banking institutions, and has permitted allotments to brokerage accounts because they are considered ''savings institutions'' by Respondent. Respondent concedes that only a few of the allotments, to the IRS and California Tax Board, are arguably impermissible.

Respondent further argues that its actions do not support a violation of Section 8(a)(3) of the Act inasmuch as it had no animus toward the Union. It cites its earlier letters to employees that maritime law prohibits the deduction from sailors' pay of charitable contributions.

With respect to the alleged unilateral change, Respondent asserts that no change has been proven since the draw check order system had never in the past been used for the payment of Union dues. Accordingly, Respondent argues that since draw checks have not in the past been used for such purpose, its refusal to honor draw checks for union dues does not constitute a change in any past practice.

General Counsel also notes that allotments have only been used in the context of foreign or intercoastal voyages, as set forth in the statute, and that the Seaman's Allotment Note has not been used since 1979.

### B. *Analysis and Discussion*

#### 1. Maritime law

It appears obvious, pursuant to U.S.C. § 10315 and the navigation circular issued in 1986, that as to foreign and intercoastal voyages, allotments of wages are required to be limited to the classes of people and institutions set forth in that section, namely to certain blood relatives, spouse and to a savings bank or savings institution. In this respect, therefore, Respondent could properly refuse to honor draw check orders payable to the Union, where such orders were received from seamen on foreign or intercoastal voyages.

However, Respondent's refusal to honor such draw check orders was not limited to sailors on such foreign or intercoastal voyages. Rather, the restrictive allotment provision of title 46 was applied to any such request, regardless of the nature of the voyage, foreign or coastwise. Moreover, in August 1988, Respondent directed that a rider be attached to coastwise shipping articles which stated that the ''only allotments permissible shall be those authorized by 46 U.S.C. Section 10315 and 10316.''

Respondent bases its authority to apply Sections 10315 and 10316 to coastwise voyages on 46 U.S.C. § 10507. That section, as set forth above, states that, with respect to coastwise voyages, where an owner or master desires, a shipping commissioner may engage and discharge the crew, and when a crew is so engaged, certain sections of 46 U.S.C. § 103, which normally applies only to foreign and intercoastal voyages, apply.

Based on my reading of the statutes placed before me, I believe that Respondent improperly interprets Section 10507. First, shipping commissioners have not been in use after 1979. Their duties have been assumed by the master of the ship. Moreover, Sections 10315 and 10316 are not among those applicable to coastwise voyages. Section 10507 sets forth eight sections of Section 103 which are applicable to coastwise voyages under this section. Sections 10315 and 10316 are not among those listed. Since those sections are not listed, and Congress has set forth those which do apply, it is clear that Sections 10315 and 10316 were meant to be excluded from the coverage of Section 10507.

Accordingly, I do not find persuasive Respondent's theory that Section 10507 permits application to coastwise voyages of the restrictions set forth in Sections 10315 and 10316 on the type of allotment seamen may make.

It therefore appears that pursuant to Section 10502, which states that, as to coastwise voyages, the shipping articles ''agreement may not contain a provision on the allotment of wages'' Respondent improperly required, in August 1988, that, as to coastwise voyages, seamen's draw check orders be restricted as set forth in U.S.C. §§ 10315 and 10316.

Whether Respondent's refusal to honor employees' draw checks payable to the Union for union dues violates the Act will be discussed in the following section.

#### 2. Labor law

##### a. *The refusal to honor draw checks to the union*

General Counsel has the burden of showing that Respondent's employees' union activities were motivating factor in its refusal to honor their draw check orders for the payment of union dues. *Wright Line*, 251 NLRB 1083 (1980). General Counsel does not argue that there is direct evidence of discrimination toward employees because of their union activities. Rather, he asserts that inasmuch as Respondent permitted the virtually unlimited use of draw checks made payable to a variety of payees, it therefore improperly decided, for discriminatory reasons, to refuse to process the employees' draw check orders made payable for union dues.

General Counsel's prima facie case consists of evidence that Respondent refused to honor employees' draw check order forms payable to the Union, while at the same time processing other draw check orders. I believe that this evidence is sufficient to satisfy General Counsel's burden of proof. The context in which the refusals to honor the employees' requests that union dues be paid by the draw check system occurred after Respondent implemented its final offer after collective-bargaining sessions failed to produce a contract. The imposition of its last offer included the termination of the dues-checkoff procedure. I am aware that there has been no claim that the termination of the dues checkoff was unlawful. However, it appears that the motivating force behind the refusal to honor the requests for the payment of union dues by draw check order is simply that these were requests made for a union-related purpose—the payment of union dues.

Respondent has the burden of showing that its refusal to honor the draw check orders for the payment of union dues would have occurred in the absence of the employees' union activities.

Respondent has used the draw check order system for many years as its substitute for a seaman's allotment note. Its officials have told seamen at orientation sessions that the draw check orders are for the purpose of having their pay sent to banks or someone at home. Respondent has shown that it would have refused to honor those draw check requests for foreign and intercoastal voyages, because such deductions for pay for the purpose of the payment of union dues is not one of the permitted categories of allotment. I reject General Counsel's argument that Respondent permitted draw check orders for prohibited purposes such as payments to courts or the IRS, because there was no evidence, in such cases, that those voyages were foreign or intercoastal. General Counsel's further argument that Respondent failed to honor U.S.C. § 10315 by permitting draw check orders payable to checking accounts or investment brokerage institutions lacks merit because such payments into those accounts are arguably permissible under the statute. The statute permits ''deposits to be made in an account for savings or investment.'' Moreover, although the language of the statute does not specifically permit it, Morris, *Law of Seamen*, relied on by General Counsel, states that the seaman ''can make an allotment for deposits to his account at a savings bank . . . or at any bank, trust company or other *similar financial institution* wherein a savings department is maintained.'' (Emphasis added.)

The troublesome question is whether Respondent would have refused to honor draw check orders for coastwise voyages in the absence of the employees' union activities. As discussed above, seamen making coastwise voyages seem to have an absolute right to make draw check orders for whomever they please. There does not appear to be any statutory restriction on a coastwise voyaging sailor's designation of any payee as the recipient of his pay. Accordingly, it would seem that Respondent would not have and should not have refused to permit its seamen to use the draw check order system for the payment of union dues. Nevertheless, there is evidence that for certain purposes, draw check orders were not permitted. Thus, a sailor's request that he pay utility bills by draw check order was denied. In addition, deductions from pay for United Way was not permitted, on the ground that the statute did not permit deductions for charitable contributions.

In essence, what I am being asked to do by General Counsel is to enforce 46 U.S.C. § 10502 which prohibits the making of allotment for coastwise voyages. The Board is not charged by the Act with responsibility for enforcement of the maritime law. However, I may, in the course of determining whether an unfair labor practice has occurred, consider arguments concerning that law to the extent they support, or raise a possible defense to, unfair labor practice allegations. See *BASF Wyandotte*, 274 NLRB 978 (1985), where the Board considered a defense based on Section 302 of the Labor Management Relations Act. In that case, however, the Board noted that it was particularly appropriate to consider Section 302 because of its close connection to the issues in that case, and the inclusion in the NLRB of both statutes.

Here, however, the area of seamen's pay has been the subject of 200 years of statutory rules, revision of such rules and congressional debate. ''One of the most decisive indicators of congressional concern for the welfare of seamen and the regulation of shipowners as employers is the treatment of seamen's wages and their prompt payment.'' *NLRB v. Sea-Land Service*, 837 F.2d 1387 (5th Cir. 1988).

Although I may consider Respondent's defense based on its interpretation of the maritime statutes, I believe that what this case involves, at bottom, is Respondent's allegedly improper application of the maritime statutes to draw check order requests. What I am being asked to do is to make a finding that Respondent violated the maritime law by misapplying various Federal maritime statutes to its coastwise voyaging employees, by refusing their draw check orders for the payment of union dues. Not only am I being asked to find that the maritime law was violated, but I am also asked to enforce that law and provide a remedy by ordering Respondent to henceforth honor such draw check orders. Enforcement of the maritime statute, I am sure, may be found elsewhere. I believe that it is beyond my authority to make such findings and enforce other statutes. Moreover, I note that the issue of the deductions from seamen's pay for union dues was the subject of congressional debate.[7] Such deductions were included in an amendment to a bill before Congress in 1950, but then, on reconsideration of the bill, that portion of the bill was rejected. Although this legislative history relates to Section 10315, in which allotments for foreign voyages are restricted, this history indicates that Congress considered, and rejected, the matter at issue here.

Accordingly, for the above reasons, I find that Respondent has met its burden of proving that it properly refused to honor the draw check orders payable to the Union for union dues.

### C. *The Unilateral Change*

The complaint alleges that in August 1988, Respondent unilaterally changed the terms and conditions of employment of the unit employees by requiring in a shipping article for coastwise voyages that ''the only allotments permissible shall be those authorized by 46 U.S.C. Sec. 10315 and 10316.''

General Counsel thus alleges that Respondent violated Section 8(a)(5) of the Act by failing to bargain with the Union regarding its interpretation and application of the maritime law to its draw check order system. There is no dispute as to the fact that Respondent, on imposing the requirement set forth above concerning allotments, did not first seek to bargain with the Union concerning its imposition.

As set forth above, my understanding of the maritime laws placed before me here, leads me to believe that Respondent impermissibly applied the above statute to coastwise voyages. The effect of such application is that the only allotments permitted, even in coastwise voyages, are those set forth in that statute. As I read Section 10502, no allotments or restrictions on pay earned in coastwise voyages are permitted.

Here, again, although I have doubts about whether Respondent is correct in its interpretation and application of maritime law, General Counsel's theory, that I find that the maritime law was improperly applied by Respondent, is beyond my authority. If Respondent impermissibly restricted its coastwise voyaging employees' use of the draw check system to only such classes of payees as set forth in Sections 10315 and 10316, the proper maritime authority is the appropriate body to make such a finding and enforce a remedy.

[7] R. Br. at 22. See 1951 U.S. Code Cong. & Ad. News 4325.

I accordingly will recommend that this allegation be dismissed.

## CONCLUSIONS OF LAW

1. Respondent, Exxon Shipping Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Exxon Seamen's Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to process employees' ''draw check order'' forms in which the unit employees directed Respondent to draw checks payable to the Exxon Seamen's Union, Respondent did not violate the Act.

4. By requiring in a shipping article that the only allotments permissible shall be those authorized by 46 U.S.C. §§ 10315 and 10316, Respondent did not violate the Act.

[Recommended Order for dismissal omitted from publication.]